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In re Application of :  
Aust et al. :  
Application No. 10/553,136 :  
PCT No.: PCT/EP04/03858 :  
Int. Filing Date: 13 April 2004 : DECISION  
Priority Date: 15 April 2003 :  
Atty. Docket No.: 016273-00600 :  
For: Method For Monitoring At Least Two :  
People Carrying An External :  
Respiratory Air Supply :

This is in response to the renewed submission under 37 CFR 1.42 filed on 21 April 2008.

#### DISCUSSION

In a Decision mailed on 10 December 2007, the declaration filed on 15 June 2007 was not accepted under 37 CFR 1.42, without prejudice, because

*Examination of the declaration filed on 15 June 2007 reveals that it nominates "Michael" Aust, and that it has been signed by Michael Aust (as opposed to "Michel" Aust named in the published international application). Applicant has not provided an explanation of this discrepancy in the spelling of M. Aust's name (nor indicated whether Michael Aust and Michel Aust are the same person).*

*The declaration also nominates and provides citizenship information for Peter Aust, but does not provide the "citizenship, residence and mailing address of the legal representative" as required by 37 CFR 1.497(b)(2).*

*It appears that Michael Aust may be attempting to execute the application on behalf of the deceased inventor, but his relationship to the inventor (e.g., legal representative or heir) is unclear. The attached "Authorization" lists "members of the community of heirs," but it is not clear whether this list of "members" includes all of Peter Aust's heirs. The enumerated "members of the community of heirs" purport to grant Michael Aust "authority... to exploit these inventions and methods on which the patent applications are based." This document does not specifically identify which "patent applications" are encompassed. Moreover, it is not clear whether this document confers or seeks to confer upon Michael Aust the status of "legal representative," or whether the listed heirs are merely attempting to appoint him as a representative of their group.*

*Applicants should provide a declaration document identifying the entire inventive entity, providing the information required by 37 CFR 1.497(b)(2), and executed on Peter Aust's behalf by his legal representative or, if none has been appointed or is required to be appointed by the applicable law, by all of his heirs.*

In response, petitioner has provided a satisfactory explanation of the apparent discrepancy in the spelling Michael Aust's name (i.e., that it apparently arose from a typographical error during the international phase).

Inspection of the new declaration documents filed on 21 April 2008 reveals one document names only Michael Aust as inventor, with language indicating that he is the "original, first, and sole inventor (if only one name is listed below). This document is defective because it clearly fails to nominate the entire inventive entity. The second declaration document implies that both Peter Aust and Michael Aust are inventors, but this is in conflict with the inventive entity named in the other declaration. This second declaration document names "Michael Aust" as "legal representative" of Peter Aust, and it provides the legal representative's citizenship, postal address and residence information. However, neither of the documents clearly provides the required information (e.g., citizenship) for Peter Aust (the preamble of said second of the declaration documents refers to a "citizen of Germany" but that statement could be interpreted to pertain to Michael Aust). Attention is respectfully drawn to 37 CFR 1.497(b)(2), which provides that

If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Thus, in order for relief to be granted under 37 CFR 1.42, 37 CFR 1.497(b)(2) requires that the declaration BOTH "state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state" AND "state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative." In view of the deficiencies noted above, it would not be appropriate to accept the declaration under 37 CFR 1.42 at this time.

By way of guidance, any renewed submission should be accompanied by a declaration which clearly nominates the entire correct inventive entity (both Peter and Michael), provides the required information for the deceased inventor, identifies Peter Aust's legal representative, is signed by said legal representative on his behalf, and provides the required data for the legal representative.

### **CONCLUSION**

The declaration is **NOT ACCEPTED** under 37 CFR 1.42, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42." Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response will result in **ABANDONMENT**.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

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